



2200 CONSTITUTIONAL ISSUES

The United States Constitution is the basis for, and provides the guiding principles of, conduct of law enforcement personnel and contact with members of the public. Persons who have had their property seized or who have themselves been seized shall be afforded due process and be advised of their rights under the Constitution.

It is the policy of the Tucson Police department to treat all persons equally and without bias during any contact or encounter.

Police action based upon personal, societal, or organizational biases or stereotypes constitutes bias-based policing. Examples of biases and stereotypes include but are not limited to those based on race, color, religion, ancestry, sex, age, disability, national origin, socioeconomic status, sexual orientation, or marital status.

Except where race or ethnicity is part of an identifying description or characteristic of a possible suspect, any consideration by members of the agency of race, color, or ethnicity in deciding whether to stop, question, search, or arrest a person constitutes racially-biased policing.

Bias-based policing, including but not limited to biased based profiling in traffic contacts, field contacts, asset seizure and forfeiture, is expressly prohibited, and shall result in corrective action or discipline.

All members shall receive relevant training. An annual administrative review of the Department's practices, to include concerns expressed by the community, is the responsibility of the Chief of Staff.

2201 Limited English Proficiency (LEP)

When dealing with members of the public, members must ensure that persons are able to understand any direction or information being exchanged. If members believe a person does not have sufficient understanding, or is unable to communicate, members shall take the appropriate steps to enhance or address the person's ability to communicate and provide competent language assistance as necessary. In deciding whether language assistance is necessary, members will consider the nature and importance of the information being exchanged. Such situations may include front desk station assistance, records requests, impound desk assistance, 911 calls, vehicle stops, issuing citations, arrests, providing Miranda warnings, interviewing witnesses or victims, conducting interrogations, addressing health and safety needs of in-custody persons, handling complaints, responding to calls and providing public safety assistance, and/or communicating with neighborhood organizations.

Pursuant to Federal law, the Department is required to provide services to persons with Limited English Proficiency (LEP). A person with Limited English Proficiency is generally an individual who does not speak English as their primary language and who has a limited ability to read, write, speak, or understand English. Members should take reasonable actions to provide competent language assistance. This requirement applies equally to adults, juveniles and their parent/guardian.

**TUCSON POLICE
DEPARTMENT
GENERAL ORDERS**



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The Department provides LEP guidance and a Language Identification Flashcard to assist members in determining what language an individual speaks, and what assistance may be appropriate. The Department maintains a LEP plan, available to all members under Share Drive/Limited English Proficiency (LEP) and to the public on the Tucson Police Department Web site.

2210 SEARCH AND SEIZURE

2211 General

The Fourth Amendment to the U.S. Constitution guarantees citizens the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. Supreme Court decisions regarding searches and seizures place the responsibility on the police to ensure that citizens' Fourth Amendment rights are honored and not violated. Officers shall scrupulously observe constitutional guidelines, as interpreted by the U.S. Supreme Court, the Ninth Circuit Court of Appeals and the Arizona courts when making seizures of persons or property and when conducting searches of persons or property.

2211.1 Definitions

- **Arrest:** An arrest occurs when a person is taken into custody, and is not free to leave, for the purpose of criminal prosecution or interrogation. An arrest must be supported by probable cause.
- **Contact:** A face-to-face consensual communication between an officer and a citizen when the citizen is free to terminate the encounter and leave. A contact may be made for any reason.
- **Detention:** A brief seizure based upon reasonable suspicion, lasting no longer than necessary to either confirm or dispel the suspicion.
- **Probable Cause:** Facts and circumstances that would lead a reasonable person to believe a crime is being, has been or will be committed and that the person to be arrested is committing, has committed or will commit that crime.
- **Reasonable Suspicion:** More than a hunch and less than probable cause; articulable reasons to suspect that criminal activity is ongoing and that the person stopped is involved in that criminal activity.
- **Search:** Law enforcement, or anyone acting on their behalf, examination of an area or item in which a person has a reasonable expectation of privacy.
- **Search Warrant:** An order in writing issued in the name of the state of Arizona, signed by a Magistrate, directed to a peace officer, commanding the peace officer to search for personal property, persons or items described within the warrant.
- **Seizure:** When an officer, by words or conduct, interferes with a person's right to liberty or freedom of movement.

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- **Stop:** A stop occurs when an officer uses police authority to limit a person's liberty of movement, such as compelling a person to halt, remain in a certain place, or perform some act. When a reasonable person would believe he or she is not free to leave, a stop has occurred.

2212 Seizures

The Fourth Amendment prohibits unreasonable seizures of persons or property. With regard to seizures of persons, the United States Supreme Court has determined that an officer may seize a person only when the officer has reasonable suspicion or probable cause to believe that the person is engaged in criminal activity.

2213 Contacts

An officer may initiate a consensual contact at any time, for any reason, and in any place where the officer has a right to be. Such contact is not a seizure (stop, detention, or arrest) but rather, is a voluntary interaction between an officer and a person. Officers should exercise discretion in inquiring about immigration status during a consensual contact, given the need for public trust and cooperation.

Persons engaged in a contact shall not be detained against their will or searched (including a frisk/pat-down). An officer may not use force or coercion in initiating a contact or in attempting to obtain cooperation once the contact is made. Officers shall act in a restrained and courteous manner. A person who does not respond to the officer's greeting or approach must be allowed to go on their way. Restraining or coercing the person in any manner to stay converts the contact into a stop, which may be made only upon reasonable suspicion.

2213.1 Field Interviews

Field interviews may occur during a contact or stop. The purpose of a field interview is to assist in the investigation and prevention of crime. Officers shall conduct a field interview whenever a stop is made and may conduct a field interview when a contact is made. The decision to conduct a field interview shall not be made merely based on race, color, ethnicity, unusual personal appearance, or personal beliefs.

A field interview shall be conducted with the utmost courtesy. Reasonable questions posed by a citizen shall be answered. The officer shall explain the reason for the contact or stop if asked to do so. Officers not in uniform shall fully identify themselves as police officers and shall exhibit their badges or credentials prior to initiating any field interview. All officers, whether in uniform or civilian dress, shall furnish a citizen with their identification number upon request. An electronic Field Interview card shall be completed when the officer determines that it may assist in the investigation and prevention of crime. If the officer does not have access to an electronic Field Interview card, the relevant information shall be documented on a paper report (memorandum or *Incident Report*) and forwarded to the division CIO, along with any additional department unit(s) that would reasonably be interested in the information.

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If an individual asks for a copy of the field interview report, the officer shall provide the person with a business card with the date, time and location of the field interview (as it will appear on the electronic FI Card) listed on the back of the card. The person shall be advised that he/she can present that information to the Records Section, after 72 hours, and a report will be made available to him/her in accordance with the existing records release protocols.

2214 Stops

A stop occurs when an officer uses police authority to limit a person's liberty of movement, such as compelling a person to halt, remain in a certain place, or perform some act. When a reasonable person would believe he or she is not free to leave, a stop has occurred. Vehicles may only be stopped based on reasonable suspicion or probable cause. Officers have no authority to stop or detain a person based upon suspicion of mere unlawful presence, as this is a federal civil violation and enforcement authority is reserved for agents of the Federal Government.

See *General Order 2213.1* regarding Field Interviews.

2214.1 Reasonable Suspicion

Officers must be able articulate a specific crime for which they have reasonable suspicion to justify a stop. The elements of reasonable suspicion include both of the following:

- Facts and circumstances that would lead a reasonable police officer to believe that criminal activity is about to take place, is currently taking place, or has taken place and
- Facts and circumstances connecting the person under suspicion with the suspected criminal activity. Reasonable suspicion may arise out of a contact or it may exist independent of a contact.

2214.2 Effecting a Stop

Officers shall use the least coercive means necessary to affect the stop of a person. The least coercive means may be a verbal request, an order, or the use of physical force. Officers shall use only such force as is reasonably necessary.

Members driving unmarked police vehicles while not wearing a police uniform will not attempt to make vehicle stops for the purposes of traffic enforcement, arrest or investigation. A marked vehicle will be called to make the stop unless none is available or the time required for the marked unit to respond would be excessive. If waiting for a marked unit would jeopardize an arrest or investigation, the unmarked unit may make the stop.



2214.3 Conduct During a Stop

Officers must use reasonable conduct throughout a lawful stop. The courts, in determining whether the stop was reasonable and therefore lawful, will consider every phase of a stop.

A person may be detained at or near the scene of a stop for a reasonable period of time. The courts have indicated that the length of a stop may be no more than the time necessary to determine whether or not a crime has been committed and whether the person will be arrested or released.

Officers shall act with restraint and courtesy toward the person stopped. Plainclothes or undercover (UC) officers conducting stops shall identify themselves as law enforcement officers as soon as practical. The officer shall give an explanation of the reason for the stop.

Officers may question a lawfully detained person for the purpose of obtaining name, address, and an explanation of presence and conduct. The person may not be compelled to answer these questions. Officers may request that the person produce identification, but citizens are not generally required to carry identification. Arizona law does require a person to provide their "true name" upon request by an officer during a stop/detention. The person must be advised that they are required to provide their "true name" and that they can be arrested for failing or refusing to do so. If the person is operating a vehicle, the officer may demand to view certain documents (such as operator's license and vehicle registration).

Officers shall not search a subject who has been stopped based on reasonable suspicion except when there is also justification to perform a frisk (see *General Orders 2232*) or when the person consents to a search. No other search may be performed.

2214.4 Requesting Social Security Number (SSN) Information

The Federal Privacy Act of 1974 requires that before requesting a person's social security number (SSN), the person must be told:

- Whether providing their SSN is voluntary or mandatory,
- The statutory authority for making the request, and
- The purpose for which the information will be used.

Before requesting a person's SSN, the person shall be advised that:

- Providing an SSN is voluntary;
- It is requested as a matter of Department policy; and
- The SSN is used to ensure accurate record keeping.

No action shall be taken against a person who refuses to provide a social security number.

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A traffic complaint (ticket) that is issued to an individual shall not contain a person's social security number. The SSN information may only be written on the law enforcement and court copies of the traffic complaint.

2215 Arrests

An arrest is a seizure and occurs when a person is taken into custody against the person's will for the purpose of criminal prosecution or interrogation. An arrest must be based upon probable cause. See also *General Orders 2100*.

2216 Seizure of Property

2216.1 Plain View

An officer who is in a place that the officer has a right to be may seize contraband or evidence of a crime, without a warrant, if the property is in plain view. This seizure is lawful, because a person has no expectation of privacy on an item that is in plain view.

It must be immediately apparent to the officer that the item is evidence or contraband simply by looking at the item. An officer may not manipulate the item or move it in any way; doing so is a search and invokes the protections of the Fourth Amendment.

2216.2 Search Warrants

Property may also be seized pursuant to a search warrant that particularly describes the item and provides authority for its seizure.

2217 Searches

2217.1 General

The Fourth Amendment has been interpreted by the Supreme Court to require a search warrant prior to any search performed by a law enforcement officer, or a person acting at the direction of a law enforcement officer, of a person, or of an area or item in which a person has a reasonable expectation of privacy.

No search may be performed without a warrant, unless the search can be justified by an exception to the warrant requirement.

2217.2 Reasonable Expectation of Privacy

The Supreme Court has determined that the Fourth Amendment protects those things in which a person has a reasonable expectation of privacy from unreasonable search and/or seizure.



2217.3 Searches Not Subject to Fourth Amendment Protection

Not every examination of a person or their property is considered a search. The examination of an item or area in which a person has no reasonable expectation of privacy is not a search regulated by the Fourth Amendment. Examples include:

- **Abandoned Property**

A person who abandons property has surrendered any privacy interest the person may have had in the property. Such property is subject to search by a law enforcement officer without a warrant.

- **Garbage**

When a person places garbage by the curb there is no longer any reasonable expectation of privacy in that garbage. Therefore, no Fourth Amendment protection is implicated by a search of that garbage.

- **Open Fields**

Defined by the Supreme Court as any unoccupied or undeveloped area outside of the curtilage of a home. This area that is considered open field does not carry a reasonable expectation of privacy, and is therefore not governed by the Fourth Amendment. See also *General Orders 2235.3*.

- **Personal Characteristics**

A person has no reasonable expectation of privacy in those items that are in the plain view of others. Examples include a person's voice, handwriting or photograph. Personal characteristics that are not subject to public examination (blood content, scrapings under a person's fingernails, etc.) are items in which a person has a reasonable expectation of privacy.

- **Plain View**

There is no expectation of privacy in an object in plain view and so no search is performed. When a police officer sees an object in "plain view" and its value as evidence or contraband is apparent, the officer may seize it, as long as the officer can do so without moving or reaching into an area in which the officer has no right to be, and does not move or manipulate the item first.

- **Search by Non-Governmental Persons**

The Fourth Amendment does not provide protection against actions of private persons. Property seized by private persons, in a manner that would otherwise be illegal if seized by a government agent does not violate the Constitution and may be provided to an officer for use in a criminal investigation. However, an officer may not



use a private person as an “agent” to search if the officer would not otherwise be authorized to conduct the search.

- **Sniff- Dog or Human**

Generally, sniffing the air around a person or property that is in a public place or a place open to the public is not considered a search, as there is no reasonable expectation of privacy in the air. The Arizona Court of Appeals has held that reasonable suspicion is required to permit a canine sniff at a person’s front door, window, or garage.

- **Visual Aids or Heat Sensing Equipment**

The use of flashlights, photo surveillance, or heat sensing equipment to view or measure property that is otherwise open to public view is not considered a search, as it simply enhances the officer’s senses. Some advanced technology using heat sensing has been held in the United States Supreme Court to require a warrant if it reveals the intimate details of persons living within.

2218 Recording of Police Activity

Individuals have a First Amendment right to record police officers in the public discharge of their duties. This right to record is not limited to streets and sidewalks, but rather includes areas where individuals have a legal right to be present, including an individual’s home or business, or other private property where the person has a right to be present. Members of the general public enjoy the same rights as members of the press to be present in any area accessible to the general public. No individual is required to have or to display ‘press credentials’ in order to exercise his/her right to observe, photograph, or record police activity taking place in an area accessible to, or within view of, the general public.

2218.1 General

Members shall be mindful that bystanders have a right under the First Amendment to observe and record Department members in the public discharge of their duties, so long as this activity does not jeopardize the safety of members or others, interfere with an investigation, or encourage others to violate the law. Examples of such actions include:

- Repeatedly telling a witness being questioned by a police officer not to respond to the officer’s questions;
- Persistently engaging or attempting to engage a member in conversation while the member is in the midst of their duties;
- Hindering a lawful arrest; or
- Inciting bystanders to hinder or obstruct a member in the performance of their duties.



An individual's recording of police activity from a safe distance without any attendant action intended to obstruct the activity or threaten the safety of others does not amount to interference.

A person's expression of criticism of the police (or the police activity being observed) does not amount to interference. The First Amendment protects a significant amount of verbal criticism and challenge directed at police officers. Even foul expressions of disapproval towards police officers are protected under the First Amendment.

- The U.S. Supreme Court has held that 'a properly trained officer may reasonably be expected to exercise a higher degree of restraint' than the average citizen when it comes to reacting to insults or 'fighting words.'
- Courts have given First Amendment protection to persons who made obscene gestures and yelled profanities at police officers, and they have prohibited the police from interfering with such speech.

In furtherance and protection of Constitutional right to record public officials, Department members shall not threaten, intimidate or otherwise discourage any individual from recording police activities. Additionally, members shall not:

- Order a person to cease recording activity;
- Demand identification from a person photographing or recording;
- Demand that the person provide a reason for taking photographs or recording;
- Detain that person based upon photographing or recording activity; or
- Intentionally block or obstruct cameras or recording devices in any manner.

The fact that a bystander has a camera or other recording device does not entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene. If a person is photographing or recording police activity from a position that impedes or interferes with the safety of members or their ability to perform their duties, a member may direct the person to move to a position that will not interfere. However, a member shall not order the person to stop photographing or recording.

2218.2 Evidence on a Camera or Recording Device

If a member has probable cause to believe that a camera or other recording device contains images or sounds that are evidence of criminal acts, the member shall either:

- Seek the free and voluntary consent of the individual to provide the device or recording medium to the member, or transmit the images or sound via text message or electronic mail to the member's official government electronic mail account; or
- Seek a warrant to seize and/or search the recording device. Warrantless seizure is permissible only when:



- There is probable cause to believe that the property holds contraband or critical evidence of a serious/felony crime; and
- The exigencies of the circumstances necessitate it, or some other recognized exception to the warrant requirement is present.

If the member believes that exigent circumstances exist insofar as evidence of criminal activity will be lost absent an immediate seizure of the device, the member shall contact a supervisor. The supervisor shall determine whether exigent circumstances are present to permit the seizure of the device without a warrant, taking into account the seriousness of the possible crime at issue. Members are reminded that materials protected by the First Amendment are afforded higher protection than ordinary evidence seized pursuant to the Fourth Amendment. Any seizure of such materials shall be no longer than reasonably necessary to obtain a warrant.

Any warrantless seizure of a recording device or media shall be temporary where needed to preserve evidence until a warrant can be obtained for any continued seizure or subsequent search.

Members shall not delete any recording or photograph from an individual's device, nor destroy or damage any device or recording media under any circumstance.

2220 SEARCH WARRANTS

2221 General

A search warrant may be issued only on probable cause and must be supported by an affidavit naming and describing with particularity the property or persons to be seized and the persons and/or premises to be searched. By statute, a search warrant may be issued to:

- Recover stolen or embezzled property
- Seize property used as a means of committing a public offense
- Seize property in the possession of any person who intends to use it as a means to commit a public offense
- Seize property in the possession of another to whom it may have been delivered for the purpose of concealing or preventing it from being discovered
- Seize property that shows or tends to show that a particular offense has been committed, or that a particular person has committed an offense
- Seize a person who is the subject of an outstanding arrest warrant



- When the property is to be searched and inspected by an appropriate official in the interest of public health, safety, or welfare as part of an inspection program authorized by law

2222 Completing an Affidavit for a Search Warrant

The affidavit for a search warrant presented to a Magistrate shall be based on the personal knowledge of the applicant or another peace officer and/or information received from an informant whose reliability shall be established at the time the warrant is issued. Each item that is the object of the search shall be enumerated.

The officer shall be extremely careful to describe exactly those premises to be searched, especially those composed of apartments, duplexes, or any places with more than one residential dwelling. If a vehicle is to be searched, it shall be described as accurately as possible. A warrant to search premises does not automatically extend to include the search of a person at the premises at the time of the search. If officers have probable cause to search certain persons who may be present at the premises, the officers shall include those persons in the affidavit and warrant.

Arizona law limits the hours during which a search warrant may be served. When drafting an affidavit specifically requesting a nighttime search, the officer must be able to allege that there is good cause for searching then, rather than waiting until daytime. Daytime is anytime between 0630-2200 hours.

An officer seeking a no-knock warrant must specifically articulate, in the affidavit, the reasons a no-knock entry is necessary.

The officer attempting to obtain a search warrant shall submit the affidavit to the officer's sergeant for review and approval prior to submission.

2223 Obtaining a Search Warrant

A search warrant may be obtained from any Magistrate in the State of Arizona, including Supreme Court Justices, Court of Appeals and Superior Court Judges, Justices of the Peace and City Court Magistrates. A completed *Affidavit for Search Warrant and Search Warrant* shall be presented to the Magistrate who, if satisfied that probable cause exists, will sign the warrant.

Only sworn testimony, in addition to the affidavit, can be appropriately considered by the Magistrate prior to the issuance of the warrant. Therefore, any communication in support of the affidavit, whether verbal or written, shall be made under oath.

2224 Telephonic Search Warrants

Telephonic search warrants may be used under the same circumstances as a standard search warrant and will be used whenever time is of the essence. All *General Orders* pertaining to search warrants shall apply to telephonic search warrants.



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2224.1 Procedure

- The officer will prepare a written outline of the facts to be presented to the Magistrate and shall complete the information on the *Standard Arizona Duplicate Original Search Warrant*. This form has been designed to facilitate the preparation of a telephonic search warrant.
- The phone call must be recorded.
- The call to the Magistrate can be placed from any telephone, but should be placed from an area where there is little or no background noise.
- As a courtesy, the Magistrate will be called and told that the officer would like to obtain a telephonic search warrant and that the officer will call back in a few minutes, to allow the Magistrate time to prepare for the call if necessary.
- When the Magistrate is prepared to begin, the tape recording equipment shall be started and these procedures followed:
 - If possible, another officer will be present to serve as a witness to the conversation.
 - The requesting officer shall give name, rank, department, and identifying number to the Magistrate. The purpose of the call shall be stated to the Magistrate.
 - Prior to reciting any facts pertaining to probable cause, the Magistrate must place the officer under oath. The failure to give an oath will invalidate the warrant.
 - After stating the date and time, the officer shall then begin to recite the facts that constitute probable cause. Upon completion, the officer shall ask the Magistrate if there are any questions.
 - If the Magistrate finds that probable cause exists, the officer must read verbatim the previously completed *Standard Arizona Duplicate Original Search Warrant* to the Magistrate.
- The Magistrate will then direct the officer to sign the duplicate original warrant. The warrant shall be signed by the officer for the Magistrate, the Magistrate's name shall be listed, and both the officer and witness shall sign, indicating their name, rank, identifying number and department.
- When all these procedures are completed, and just prior to hanging up the telephone, the officer shall state the time at which the conversation with the Magistrate is finished, and check the recording to ensure it worked.

After authorizing a signature on a duplicate original search warrant for the requesting officer, the Magistrate is required by law to make an original search warrant, with the time of issuance of the duplicate warrant entered upon the original. Local Magistrates require



that police personnel complete the original search warrant. When the officer makes the return on a telephonic warrant, the original warrant, with the time of issuance entered, must be returned as well.

2224.2 Effect

When the Magistrate authorizes the officer over the telephone to sign a search warrant in the Magistrate's name, the duplicate original search warrant has the same authority as a search warrant signed by the Magistrate.

2224.3 Execution of the Search Warrant

The *Duplicate Original Search Warrant* shall be executed in the same manner as an original search warrant. In addition, the exact time of the execution of the warrant must be entered on the face of the warrant by the officer executing it

2225 Executing a Search Warrant

In order to ensure the appropriate execution of a warrant, the following procedures shall be followed.

2225.1 Before Execution

A briefing shall be held in all instances where a forced entry may be necessary, and this briefing shall include raid and arrest operations planning, which outlines at a minimum:

- All personnel involved and their assignments
- Diagrams, sketches, photographs and/or maps of that target location
- Special equipment needed or utilized such as body transmitters, recording devices, video equipment, etc.

As soon as practical after a Department member believes a search warrant may be executed, a surveillance of the target location shall be implemented, unless the premises are already secured

The Force Commander or a Division Commander and Communications shall be notified of the location of the execution of the warrant. If the warrant is served anywhere outside the City of Tucson, the jurisdiction in which the warrant is to be served will be notified.

2225.2 Knock and Announce Search Warrants

Officers will knock and announce prior to all entries to serve search warrants unless a Magistrate has authorized an unannounced entry in the issuance of a warrant, or a Commander has approved the unannounced entry. The Commander granting the approval should complete a police report completely documenting the facts and circumstances that justified the "no-knock" entry. Arizona law provides that an officer may



break open a door or a window of any building in which a person to be arrested is reasonably believed to be, if the officer is refused admittance after the officer has announced the officer's authority and purpose.

The portion of the statute that authorizes entry to serve a warrant without first knocking was adopted in July 2000. The United States Supreme Court has determined that making an unannounced entry is one of the considerations in whether the search was reasonable and therefore constitutional. Making an unnecessary unannounced entry may result in a judicial finding that the search was unconstitutional.

2225.3 Serving the Warrant

Any deviation from the execution of search warrant procedures will be cleared through the Commander of the Division responsible for the search warrant. When knocking and announcing, officers shall make their presence known to the occupants of the premises to be searched, and shall announce in a voice loud enough to be heard by occupants inside, that they are police officers, they have a search warrant for the premises, and that the occupants must allow officers to immediately enter.

When the Incident Commander of the detail executing the search warrant anticipates forcing entry into an occupied structure and/or using force against the occupants, the Incident Commander shall (in addition to the remainder of this *General Order*):

- Determine and make provisions for communications and specialized equipment needs.
- Coordinate required assistance from specialized support units, (e.g., SWAT)
- Consider availability of medical resources
- Develop strategies and tactics for approaching, entering, securing, and leaving the structure
- Discuss the threat potential and the anticipated necessity for using force and making arrests with all members of the entry and search teams.
- When the potential for violence is imminent or considered significant, review the plan with the Commander of the squad executing the search warrant to evaluate its effectiveness and approve the necessity of action.

A sworn supervisor shall be in charge of all search warrant executions. The supervisor, or officer designated to do so by the supervisor, will have possession of the search warrant, hand it directly to the person upon whom the warrant is served and explain its purpose at that time. If the location is not occupied, the search warrant copy shall be left at the location in a visible location.

The supervisor of the squad executing the search warrant shall be in attendance and in appropriate uniform for the duration of the search warrant procedure. The supervisor is responsible for all notifications, warrant information review, warrant procedure conduct



and security, appropriate memos, tape recordings of procedure and other tactical or administrative details regarding the operation.

All officers involved in the initial entry shall wear body armor. Supervisors may permit exceptions to this requirement (i.e., ruses.) but the exceptions must be documented. Uniformed patrol supervisors and officers will be used as situations dictate but will be returned to their regular duty assignments as soon as reasonably practical. Undercover officers whose dress and appearance are not conventional for law enforcement personnel will not be involved in the search warrant entry team and normally will not be in view of any persons inside the premises until entry has been accomplished.

Photographs shall be taken of any damage caused by the execution of the warrant, the damage shall be described within the *Incident Report* and a memo with the report number included shall be forwarded to the department Legal Advisor.

2225.4 Seizure of Property

Although several officers may engage in the search, one officer shall be designated the "finder." That officer is responsible for documenting the circumstances of the search for and seizure of all property. Another officer shall be designated as the "recorder" and be responsible for marking, sealing, photographing, and recording the evidence.

Officers may search only in those places where the evidence they are authorized to seek may be found. For example, an officer may not search for a sawed off shotgun in a matchbox.

During the execution of the warrant, officers executing the search may seize those items described in the warrant as well as any contraband, items of property which the officer has probable cause to believe are stolen, instrumentalities of a crime, or items of evidentiary value, even though such property is not named on the warrant. Such articles may be seized only if they have been found within the course of a proper search under the warrant.

A search warrant is required to search a computer absent a reasonable belief that evidence will be destroyed in the time that it would take to obtain a warrant. If officers encounter evidence of other crimes when searching a computer pursuant to a warrant, then the officers must stop and either amend the original warrant to include evidence of the new crime or obtain another warrant.

When an officer seizes property under the warrant, a detailed receipt for the property seized will be given to the person from whom it was taken or in whose possession it was found. If the property is seized when a person is not present, a receipt will be left at the location where the property was found. Any officer present and participating in the search may sign the receipt.



2225.5 Returning the Search Warrant

A search warrant must be served within five calendar days of issuance (unless extended by the court for additional five calendar days). The return of the warrant must be done within three court business days (this excludes weekends and holidays), as per ARS 13-3918.

2230 EXCEPTIONS TO THE WARRANT REQUIREMENT

2231 Consent Searches

Consent is more than just an exception to the warrant requirement. Consent is a waiver, not only of the warrant requirement, but also of the probable cause requirement. Whenever possible, a *Consent to Search Form* (TPD 1302) shall be completed, signed by the subject and witnessed by an officer or the consent should be tape-recorded. Officers shall not perform a consent search on a residence unless the person consenting signs the Department *Consent to Search Form* and the officer is satisfied that the person read and understood the form.

The most important factor the courts will consider when determining if consent was valid, is the voluntariness of the consent based upon the totality of the circumstances. The list below notes some of the factors courts have considered in determining whether consent is voluntary.

- Knowledge of the right to refuse. It is recommended that the subject be told of the right to refuse the search.
- Assistance of the subject in conducting the search.
- Whether the subject was cooperative.
- The subject's prior arrest record, which may demonstrate knowledge and experience with police procedures.
- The number of officers present.
- A brief amount of time spent obtaining consent.
- Any threat of consequences if consent is not given.
- Circumstances indicating use of force (i.e. drawn weapons) and detention in handcuffs.
- Whether the subject is in custody or investigative detention. Consent is more likely to be found voluntary if the subject is free to leave, less likely to be found voluntary if the subject is in custody.
- The person's ability to understand the request for consent. If the subject does not speak English, the consent shall be sought in the subject's native language.



- The age, education, and intelligence of the subject.

2231.1 Scope

The extent of a consent search is limited by the consent given. The person can stop the search at any time, or restrict the breadth of the search at any time.

2232 Frisks and Pat Downs

The essential elements of a lawful frisk (or pat-down) are that the subject to be frisked must have been stopped based on reasonable suspicion of criminal activity and the officer must be able to articulate a reasonable belief that the person to be frisked is presently armed. This reasonable belief may be based on factors such as:

- The person's appearance, including clothing that bulges in a manner suggesting the presence of objects capable of inflicting injury, or demeanor suggesting the possibility that the subject is armed.
- The person's actions, including furtive movement as if to hide a weapon when the officer approached, or words or actions that are threatening.
- Prior knowledge of the person, including whether the person has an arrest record for weapons or other violent offenses, or whether the person has a reputation in the community for carrying weapons or for assaultive behavior.
- Location of the incident, including whether the area is known for criminal activity, is a high crime area, or is a remote area.
- Time of day and whether the encounter is taking place in a well-lit area, or whether the area is dark.
- The police purpose for the stop, including whether the officer can articulate facts and circumstances that lead the officer to believe that the person stopped may have been involved, or is about to become involved, in a serious and violent, or armed, offense.
- Information about companions, including whether the officer has frisked a companion of the suspect that revealed a weapon and whether the officer has immediately available assistance with regard to the number of subjects that have been stopped.

2232.1 Scope

The frisk shall be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments that might be used to assault the officer.

The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue the investigation without fear of violence.



A frisk is generally limited to a pat down of the outer garments of a suspect, particularly those areas most likely to contain a weapon. The frisk may be extended to areas designed to discover potentially lethal weapons. For example, a commonly justified frisk occurs when an officer sees or feels a bulge in some part of the person's clothing, which might be a weapon.

2232.2 Procedure

The frisk may be conducted immediately upon establishing the detention or at any time during the detention, but will be made as soon as the officer develops a reasonable belief that the person being detained is presently armed.

In order to justify a frisk, officers conducting a frisk must be able to articulate the specific factors that led them to conclude the person being detained was presently armed.

If, while conducting a frisk, an officer feels an object whose contour or mass makes its identity as a weapon or contraband immediately apparent, this item may be seized. If, however, the officer is sure this item is not a weapon, but is unsure whether it is contraband, the officer may not squeeze or manipulate the item in order to identify it.

If the frisk discovers a seizable item, the officer shall seize it and consider it in determining if probable cause exists to arrest the person.

- **Securing Separable Possessions**

If the person is carrying an object immediately separable from the person (e.g., a purse, shopping bag, briefcase, etc.), the object shall be removed from the person's control.

Officers shall not look inside the object, but shall place it in a secure location out of the person's reach for the duration of the detention. However, if something occurs during the detention that causes the officer to reasonably suspect the possibility of harm if the object is returned unexamined, the officer may briefly inspect the interior of the item before returning it.

Persons frisked but not arrested shall have any objects taken from them returned to them upon completion of the frisk, unless the objects constitute contraband or evidence of a crime.

- **Returning Firearms**

If the item being removed from the person's control is a firearm and the firearm is to be returned to the person it shall not be disassembled.

If the officer is familiar with the weapon and it can be done so safely, the officer shall remove the magazine and clear the chamber prior to returning the firearm.



▪ **Record Keeping**

- Adequate records of stop and frisk activity serve to ensure the proper exercise of law enforcement authority and enhance an officer's ability to reconstruct those factors that prompted the stop or frisk, and what took place during the confrontation. They also serve to protect the officer from baseless allegations of wrongdoing.
- Officers who have stopped or frisked any person shall document the event via a *Field Interview* card or *Incident Report*.
- If the stop or frisk was based in whole or in part upon an informant's tip, the officer making the stop or frisk will attempt to obtain and record the identity of the informant, and record the facts concerning such tip (e.g., how it was received, the basis of the informant's reliability, and the origin of the informant's information) in a report.

2233 Searches Incident to Arrest

A search incident to arrest is permissible in the following situations:

- After a full custodial arrest and prior to transport, and
- After an arrest, even when a person is to be field released, if the officer has reason to believe there is a need to search for evidence related to the offense which the person has been charged.

2233.1 Scope

An officer has the authority to conduct a full search of the person of an arrestee following a full custodial arrest and prior to transport.

The search incident to arrest of an arrestee who will be field released is limited to a search for evidence related to the offense with which the person is charged if the officer has reason to believe such evidence will be discovered. For example, a person arrested for shoplifting may be searched for additional stolen merchandise prior to being field released.

2233.2 Strip Searches

No officer shall request a strip search of a suspect without the express permission of a Commander. Strip/body cavity searches (incident to felony arrest or to a search warrant) shall only be conducted by medical or jail personnel utilizing medical or jail facilities to ensure safety and privacy for the individual. Pima County Jail requires probable cause and the completion of a memorandum at the time of the request, documenting the basis for the search.



Officers of the same gender as the arrestee, may observe only if it is considered necessary for the preservation of evidence. In every case, the search shall be documented in an *Incident Report* or *Supplementary Report*.

2234 Emergency Search of a Person

Various courts have allowed warrantless searches of persons when those searches are in response to emergency situations concerning an injured or unconscious persons requiring aid, rather than a search for evidence to further a criminal investigation.

The scope of an emergency search of a person is limited to the extent necessary to effectuate the purpose.

Officers must be able to demonstrate that the emergency presented by the injured or unconscious person is readily apparent and there is a need to intrude upon the privacy interests of that person for one or more of the following reasons.

- Identification of the person in order to contact relatives or friends;
- Determination of the need for specific medication, e.g. medical bracelet, necklace, or card, or evidence of medication, etc.
- Discovery of the nature of the injury or problem by examination.

2235 Searches of Residences

2235.1 General

A search of a person's residence without a warrant is presumed to be unreasonable. Officers must be very careful about entering a home without a warrant and must be prepared to justify, in detail, any entrance to a residence based on an exception to the warrant requirement. See *General Orders 2220* for procedures for obtaining and serving a search warrant.

2235.2 Abandoned Premises

A person has no reasonable expectation of privacy in property that the person has intentionally or constructively abandoned. A police officer may enter such premises and this would not be a search under the Fourth Amendment.

The most likely application of this concept would be in an abandoned rental property. While the tenant who abandoned the property would no longer have a reasonable expectation of privacy, the landlord likely does. In such an instance, the officer must seek consent from the landlord or person with apparent authority over the premises to search the premises.

Intent to abandon will not be presumed. Whether abandonment has occurred will be determined by a review of all circumstances.



2235.3 Open Field and Curtilage

Areas within the curtilage of a home are treated as a part of the residence and are highly protected by the Fourth Amendment. "Curtilage" is normally defined as the area around the home to which the activity of home life extends. To determine curtilage, the U.S. Supreme Court considers:

- The proximity of the area to the home,
- Whether the area is included within an enclosure surrounding the home,
- The nature of the uses to which the area is put, and
- The steps taken to protect the area from observation by people passing by.
- The "open field" around a residence is defined as the unoccupied or undeveloped area outside of the curtilage. The Supreme Court has determined that there is no reasonable expectation of privacy in the open fields around a home and, therefore, a search of open fields does not raise a constitutional issue.

2235.4 Aerial Views

Naked-eye aerial observation of areas around a home, even within the curtilage, does not constitute a search. As long as the observations are made with the naked eye and from a public vantage point where the officers have a right to be, the surveillance will be constitutional. Any over-flight for surveillance may not interfere with the person's use of his property or reveal intimate details connected with the home or curtilage. A flight so low that the downdraft or noise would interfere with the reasonable use of the property might be considered unconstitutional.

2235.5 Consent Search of a Residence

▪ Elements

- The courts will look to the totality of the circumstances in determining whether or not the consent was voluntary.

▪ Scope

- The extent of the search is limited by the consent given. The subject can stop the search at any time, or restrict the breadth of the search at any time.
- The extent of the search is limited to the area over which the consenting party has apparent authority.
- If more than one person has apparent authority to consent and at least one declines consent, officers may not rely on consent of the other.

▪ Common Authority

- Whether or not a person has authority to consent to a search of particular property or a particular area depends on all of the facts known to the officers at



the time. It is not necessary to prove that a person has actual authority; apparent authority is sufficient.

- The officer must be prepared to detail why the person giving consent was reasonably believed to have authority to do so.

▪ **Procedure**

- Officers may request consent to search from any person who has apparent authority over the immediate area to be searched or the object sought.
- Officers shall not perform a consent search on a residence unless the person consenting signs the Department *Consent to Search Form* (TPD 1302) and the officer is satisfied that the person read and understood the form.

2235.6 Public Safety or Emergency Search of a Residence

This exception to the warrant requirement generally relates to factual situations in which it appears that a person may be hurt or in need of immediate medical assistance. Examples include welfare checks and domestic violence situations where the crime is ongoing.

This exception is based upon the need for immediate aid, not on the need for investigation or the seriousness of an offense. The reasonableness of an officer's entry under the emergency aid exception is a question of fact for the trial court. Officers shall document specific facts warranting the necessity for the immediate entry.

▪ **Elements**

- There must be reasonable grounds to believe an emergency is at hand and that there is an immediate need for assistance for the protection of life or property.
- There must be some reasonable basis to associate the emergency with the area or place to be searched.

▪ **Scope**

- The search may extend only to those areas where it would be reasonable, in light of the nature of the emergency, to search.

2235.7 Protective Sweep/Exigency

▪ **Elements**

Officers affecting an arrest inside a residence may, when they reasonably perceive an immediate danger to their safety, make a warrantless, protective sweep of a



residence. Judicial decisions on protective sweeps have authorized them in two circumstances. They are:

- When an officer is lawfully within a residence to affect an arrest and there are circumstances that give the officer a reasonable belief that there might be others within the residence that pose an immediate danger to the officer.
- When officers arrest someone near the door, but outside a residence and there is reason to believe that a confederate might be within the residence that poses a danger to the officers. This exception will apply only when there is reason for either the officers to fear violence based on the nature of the crime or other information related to the arrestee or the arrestee's confederates.

▪ **Scope**

- The protective sweep exception to the warrant requirement does not authorize officers to search a residence simply because they are interviewing an occupant, either at the threshold or within the residence, when they are not making an arrest and there are not articulable reasons for believing someone might be within who poses a threat.

The search is limited to those areas in which the person may be found.

2235.8 Hot Pursuit Search of a Residence

▪ **Elements**

- Pursuit must be "hot." Although an officer need not be in sight of the fleeing suspect, the officer must be in active pursuit of the fleeing suspect from the immediate commission of the crime if this exception is to be applied. Case law has determined that delay to wait for additional units and to plan an apprehension may remove the "hot pursuit" aspect and require a warrant.
- "Serious crime" only: There is no clear consensus in the courts as to what type of a crime is to be considered serious. It is recommended that this exception be used only for fleeing felons and serious violent misdemeanors.

▪ **Scope**

- Search is limited to those areas in which the person may be hiding.

2235.9 Destruction of Evidence/Evanescent Evidence

▪ **Elements**

- Facts indicating the ongoing destruction, or the immediate danger of destruction, of contraband or crime-related evidence.

▪ **Scope**

- Search is limited to those actions necessary to preserve the evidence until a search warrant can be obtained.



2235.10 Search of a Residence Incident to an Arrest

- **Elements**

- The officer is in the home lawfully.
- The arrest of the person is lawful.

- **Scope**

- The officer may search areas under the immediate control (or “wingspan”) of the arrestee if there is reason to believe there will be evidence of the crime of arrest or that a danger to the officer is present. With respect to the Supreme Court case *State v. Gant*, courts are likely to place similar limitations on a residential search incident to arrest, and the courts will heavily scrutinize any such search. If you are making an arrest and the arrestee is handcuffed and secure, a search of the immediate area is only proper if there is reason to believe you will find evidence of the crime of arrest.

2240 SEARCHES OF A VEHICLE

2241 Consent Searches

As in all consent searches, the issue of voluntariness must be addressed. The owner or a person with apparent authority over the vehicle (the driver) may consent to its search. A third party may give consent, if that person has joint access to or control over the vehicle but officers must honor the ability of one with joint authority to decline consent.

2241.1 Scope

Neither reasonable suspicion nor probable cause is required. The extent of the search is limited by the consent given. The subject can stop the search at any time, or restrict the breadth of the search at any time.

2241.2 Procedure

Whenever possible, a *Consent to Search Form* (TPD 1302) shall be completed, signed by the subject and witnessed by an officer or the consent should be tape-recorded.

2242 Search of Vehicles Incident to Arrest

Per the Supreme Court case *State v. Gant*, limitations are placed on the search of vehicle incident to arrest and the courts will heavily scrutinize any such search. If you are making an arrest and the arrestee is handcuffed and secure, there is no basis for searching the arrestee's vehicle, because the court has ruled that the arrestee no longer presents a danger by being able to grab a weapon or destroy evidence. Attempts to leave an arrestee unsecured to justify a vehicle search could compromise an officer's safety and will be challenged as a ploy to circumvent the court's ruling.



2243 Vehicle Search: Probable Cause

In order to search a vehicle without a warrant, an officer must have probable cause to believe there is contraband or evidence in the vehicle, and the vehicle must be readily mobile. Some examples of "vehicle exception" to the warrant requirement that may lead to probable cause include, but are not limited to:

- A canine alerts on the vehicle;
- An officer smells the odor of fresh or presently burning marijuana coming from the vehicle;
- An officer sees contraband, narcotics, or paraphernalia in plain view in the vehicle;
- The arrestee makes statements about evidence or contraband in the vehicle.

2243.1 Scope

The scope of a vehicle search is the same as would be authorized by a search warrant. The search shall be limited by the object of the search, and may include the passenger compartment, trunk and all containers (locked or unlocked, belonging to driver or passenger(s) within the vehicle.

2244 Vehicle Frisk

For a vehicle to be frisked, the officer must have made a lawful investigatory stop based upon a traffic violation or reasonable suspicion of criminal activity, and the officer must have a reasonable suspicion that the persons in the vehicle are presently armed and dangerous.

2244.1 Scope

The scope of a vehicle frisk is limited to those areas in the passenger compartment of the vehicle in which a weapon may be placed or hidden and readily accessible. For example, under the seat, in a door pocket, an unlocked center console, or an unlocked glove box.

2245 Vehicle Inventory

The vehicle inventory is designed to protect the owner's property while it is in police custody, to protect members against claims of lost, damaged, or stolen property and to protect members and the community from loss and potential danger. All vehicles meeting the criteria for inventory shall be inventoried. See *General Orders* under Vehicle Inventories.

2246 Miscellaneous Vehicle Searches

If lawful authority for a search is present, officers will keep the following in mind:



2246.1 Opening Locked Containers

When possible, officers shall open a locked container, trunk, or glove compartment with a key rather than by force. If keys are unavailable, and time permits, officers shall contact the City contract locksmith to respond and open the vehicle or container.

2246.2 Location of Search

Where the search of a vehicle is lawful and it is not feasible to conduct the search at the scene of the arrest, the vehicle shall be secured in police custody at all times until it is searched. The search shall be conducted as soon as practicable.

2246.3 Search for Vehicle Identification Number (VIN)

An officer may remove items on the dashboard of a vehicle that are blocking the view of the public VIN from the outside of the vehicle if investigating an offense related to the ownership of the vehicle. This VIN is normally visible through the windshield. When checking the registration of a vehicle, the officer may compare the VIN on the registration with the VIN on the vehicle.

2246.4 Motor Home/Mobile Home

A motor home or mobile home, if apparently mobile, is treated the same as a motor vehicle for the purposes of warrantless searches. Motor homes and mobile homes that are apparently affixed to a location, e.g., water hookups, skirts, lack of wheels, shall be treated as residences, not as vehicles.

2246.5 Aircraft

Aircraft are subject to the same exceptions to the warrant requirement as are automobiles.

2246.6 Abandoned Vehicle

If a vehicle is truly abandoned, there is no need for a search warrant or exception to the warrant requirement, as there would be no reasonable expectation of privacy in the vehicle. This does not include vehicles that are dismantled, or possibly junked on a person's private property. Any time a person would have a reasonable expectation of privacy in that vehicle, it is not abandoned.

2246.7 Registration

A search for registration in a vehicle can be done without a warrant only if the officer has reasonable suspicion to believe the vehicle is stolen.



2246.8 Forfeiture

An officer does not need a warrant to seize a vehicle in a public place if there is probable cause to believe it is subject to forfeiture.

2250 VICTIMS' RIGHTS

2251 Definitions

For purposes of determining the correct application of the Victims' Rights laws, the following definitions apply:

- **Arrest:** The actual custodial restraint of a person or the person's submission to custody.
- **Criminal Offense:** Conduct that gives a peace officer or prosecutor probable cause to believe that a felony, a misdemeanor, a petty offense or a violation of criminal ordinance has occurred.
- **Victim:** A person against whom the criminal offense has been committed, including a minor. If the person is killed or incapacitated, the person's spouse, parent, child grandparent or sibling, any other person related to the person by consanguinity or affinity to the second degree or any other lawful representative of the person, except if the person or the person's spouse, parent, child grandparent, sibling, other person related to the person by consanguinity or affinity to the second degree or other lawful representative is in custody for an offense or is the accused. Although legal entities and neighbor associations can be considered victims, their rights under Arizona law are limited.
- In the case of a conflict between these orders and current A.R.S., A.R.S. will supersede.

2252 General

The Victims' Rights legislation mandates that law enforcement shall provide certain information to victims of any criminal offense (defined above) as soon after the detection of a criminal offense as the victim may be contacted without interfering with an investigation. The Department website also has further information regarding victim/witness assistance under Crime Prevention/Links.

Whether or not an arrest is made, in all incidents where a criminal offense has occurred and a victim (as defined above) has been identified, the appropriate form/report shall be used to document the incident, as well as to document the service of the *Victims' Rights Form*. This form shall be utilized to inform victims of their rights, to advise victims of available resources and assistance, and comply with notification requirements. Officers will ensure that they have an ample supply of this form to meet the requirements of the statute.

2252.1 Address Confidentiality Program

The Victims' Rights legislation mandates that a victim of domestic violence, a sexual offense, or stalking who fears for their safety may apply to the Secretary of the State of

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Arizona to participate in the Address Confidentiality Program (ACP). The ACP program will assist registered victims in using a substitute address as their legal address of record when creating a new public record with the intent of maintaining their actual address confidential. The Secretary of State will issue a card to the ACP registered victim.

The ACP is the legal agent for a participant's first class, certified, and registered mail. Any service of process on the participant can be done on the Director of ACP or her designee. This will have the same effect as if the participant was served directly. Law enforcement agencies are required to accept the substitute address as the participant's work, home or school address when presented with the ACP Authorization Card by the participant. This card is not a form of identification, but rather provides assurance only authorized individuals are afforded the protection of the substitute address.

Law Enforcement may call the dedicated ACP agency line to verify a person's status in the program by contacting the Records TWX operator to obtain the secure telephone number. Being a participant in ACP is not confidential, only the participant's address is confidential. For police reports, officers will document the substitute address as the home, work or school address for a registered participant. Officers shall also document that the individual is an ACP participant on the report.

If TPD law enforcement personnel need to obtain an ACP participant's actual address for purposes of criminal investigation the officer shall call the ACP emergency phone number to verify the participant, fill out an Emergency Request of Disclosure of Authorized Use form accompanied by a TPD request on letterhead, and fax to the ACP Director or her designee. Once ACP provides the actual victim address, it should remain confidential. The ACP Emergency Request of Disclosure and TPD letter requesting the address shall be forwarded to the TPD Records Section when it is completed. Records personnel will house the forms in a separate, secured file to maintain confidentiality of the victim's address. The form will be destroyed once the requesting law enforcement officer notifies the TPD Records Section.

2253 Initial Investigation

Field officers conducting an initial investigation into a complaint of an applicable criminal offense shall provide a *Victims' Rights Form* to all identifiable victims. The initial investigating officer, prior to giving the form to the victim(s), will fill out all applicable lines and boxes on the face of the form, to include the case number. After giving the victim the rights form, officers shall indicate service by marking the appropriate box on the *Incident Report*. If another type of report is used, officers shall write "VR Form Served" in the first line of the narrative.

If the victim is not available, officers shall document this fact in the narrative of the *Incident Report*. Officers shall mail a Victim's Rights Form to the victim.

In the event an arrest is made at the initial investigation stage, and this law applies, officers shall fill out all applicable lines and boxes on the *Victims' Rights Form* and deliver it to all identifiable victims, prior to the arrestee's initial appearance court date and time in accordance to G.O. 2113.20. Officers shall document this fact in the narrative of the *Incident Report* following the above procedures.

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In those instances in which an *Arizona Traffic Ticket and Complaint* is issued to the arrestee, officers shall ensure that the "Victim Yes, No" and "Victim Notified Yes, No" boxes are appropriately marked on the citation form. This will alert the prosecutor and the judge that there was (or was not) a victim of the crime, and if there was a victim, that the victim was notified (or not notified) of their right to appear at the initial appearance.

The victim/witness will be advised to call 911 if the suspect or his/her companions subject them to threats or intimidation. They will also be directed to contact the appropriate detective detail to report further case information or to check on case status.

2253.1 Initial Investigation by Telephone

Units that take initial reports of criminal activity over the telephone are responsible for ensuring that victims are apprised of their rights. This shall be done by mailing a *Victims' Rights Form* to the victim, unless an officer is sent to talk with the victim in person.

2254 Follow-up Investigation Resulting in an Arrest

Officers and detectives, who arrest a subject during a follow-up investigation, shall ensure that any identifiable victim is notified of the arrest. Additionally, the victim shall be notified of the initial appearance date, time, and location, prior to the initial appearance of the arrestee. This will normally be done in person and via the *Victims' Rights Form*, following the guidelines for documentation in *General Orders 2253*.

2255 Collisions Involving Violation of a State Criminal Statute

Drivers or occupants of vehicles, or pedestrians, who are involved in or are physically injured in a collision with a defendant who is charged with a felony violation relating to the driving of a vehicle (this includes criminal violations of Title 28), shall be given a completed *Victims' Rights Form*, when applicable.

2256 Interviews by Defense Attorneys

The Victims' Rights Implementation Act affords victims of specified crimes the right not to be interviewed by a defense attorney including when the victim is a police officer and the crime occurred in the course of the officer's duty. The officer has the right to refuse a defense interview.

2260 INTERROGATION AND CONFESSION

2261 Definitions

- **Custody:** Whether a reasonable person in the suspect's position would believe that his/her freedom was being deprived in a significant way. Custody, for purposes of interrogation, is a question of law for the court to determine, based upon what a "reasonable person" would believe. It is not determined by the subjective belief of either the officer or the suspect. It does not include traffic stops.



- **Interrogation:** Words or actions that an officer should know are reasonably likely to elicit an incriminating response.

2262 Right to an Attorney During Interrogation

There are two instances when a suspect has a right to have an attorney present during questioning. They are:

- When the suspect is in custody and is being interrogated. This right is derived from the Fifth Amendment to the U.S. Constitution (the right against self-incrimination). This right applies to custodial questioning about any and all crimes but applies only when the suspect invokes the right to an attorney.
- Once "formal adversary proceedings" have begun. After a person has been formally charged, by indictment or summons and complaint, the right to counsel attaches. This right to counsel arises under the Sixth Amendment to the U.S. Constitution and applies whether or not the person is in custody. However, it applies only to the crime charged. Questioning or interrogation may occur for other crimes for which the person has not been charged and which are unrelated to the crime charged. Under a recent Supreme Court decision, officers may be able to approach the person about the charged crime. Consult with the Legal Advisor or County Prosecutor for specific direction.

2263 Fifth Amendment: Rights under *Miranda*

Miranda rights must be read to a person when:

- The subject is in custody **and**
- The subject is interrogated.

Miranda provides an in-custody criminal suspect with two distinct rights: the right to remain silent (refuse to answer any questions) and the right to an attorney to assist during questioning.

There are a few exceptions to this general rule with regard to when it is necessary to read a suspect's *Miranda* rights. *Miranda* rights do not need to be read to a person:

- During routine traffic stops;
- When asking booking questions;
- When public safety makes it imperative that the officer act as quickly as possible. Known as the "public safety exception" to *Miranda*, this rule allows an officer to question a person without *Miranda* warnings when an issue of public safety or other emergency makes it imperative to obtain information from the suspect immediately. In such a situation, immediate questioning pertaining to eliminating the danger is permitted. This exception will generally occur only at crime scenes, when the officers first arrive, the scene has not been secured and there is an immediate danger to the public or the officers. Questions may be asked of the

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suspect in such a situation in order to eliminate the immediate danger. Questions not directly related to eliminating the danger are not permissible prior to *Miranda*;

- Spontaneous statements. If a suspect makes an unsolicited statement, the statement will be admissible even though the officer has not read *Miranda* warnings, as long as the statement is not in response to interrogation or provocation;
- *Miranda* warnings need not be read prior to obtaining non-testimonial evidence, such as samples of handwriting, blood, urine, fingerprints or hair.

Officers may read *Miranda* rights directly from their rights card or may recite the rights from memory. The *Miranda* rights are:

You have the right to remain silent.

Anything you say can be used against you in a court of law.

You have the right to the presence of an attorney to assist you prior to and during questioning, if you so desire.

If you cannot afford an attorney, you have the right to have an attorney appointed for you prior to questioning.

2264 Voluntariness

The burden is on the officer to prove that a suspect has understood the *Miranda* rights and made a voluntary waiver of those rights. In order to ensure that the court finds the waiver to be voluntary, officers shall:

- Ask the suspect if the rights were understood and whether the suspect will voluntarily answer questions
- Not physically abuse or threaten suspects
- Not make any promises or deals with the suspect in order to solicit any information from him during an interrogation
- Cease all questioning immediately upon the suspect's request to remain silent or to consult with an attorney

Officers shall be careful in explaining the *Miranda* rights to suspects who may have trouble understanding them, such as juveniles, persons with low IQ, and persons for whom English is not their first language. If necessary, *Miranda* rights and interrogation shall be conducted in the appropriate language other than English.

When documenting any waiver under *Miranda*, officers shall record in their report all information concerning when, where, and who read the *Miranda* rights to the suspect. The report shall also include the names of other persons who witnessed the giving of *Miranda* rights and the suspect's response. The officer will include in the report the exact words the suspect used when waiving



his/her rights. If the suspect invokes his/her rights, the officer shall record whether the suspect invoked the right to remain silent or the right to an attorney. This is necessary so that follow-up detectives will know whether or not they can later attempt to re-Mirandize the suspect for interrogation.

2265 Questioning after Invocation

If the suspect invokes the right to silence, then questioning must stop until either:

- The suspect initiates further discussion and the suspect is given *Miranda* warnings again and waives his or her rights;
- Or there has been a sufficient break in time (at least several hours) and the suspect is given *Miranda* warnings again and waives his or her rights.

If the suspect invokes the right to counsel, then questioning must stop until the suspect is provided with an attorney and is given an opportunity to have the attorney present during questioning. An officer may not reinitiate questioning. The suspect may reinitiate the conversation, but before any questioning by the officer, the officer must obtain a waiver of the right to counsel.

In addition to demonstrating that a criminal suspect received and waived *Miranda* rights, the state must prove that any confession was voluntary. To prove voluntariness, the state must prove that the confession was freely given and was not the result of duress or coercion. The court will consider the physical treatment of the suspect, and any threats, promises, or "deals" made by the officer in determining whether a statement is voluntary. Officers must be particularly careful during interrogation of suspects not to engage in any conduct that may be characterized as coercing a confession from the suspect.

2266 Sixth Amendment: Right to Counsel

Once a defendant has been formally charged (e.g., has had an initial appearance, been indicted, or arraigned), there is a constitutional right to have an attorney present during any dealings with police or prosecutors. A suspect may waive the Sixth Amendment right to counsel, but any such waiver shall be done on audio or videotape to provide the necessary proof.

The sixth amendment right to counsel is offense specific. This means that officers may question the defendant regarding other unrelated offenses, so long as the defendant is given and waives the *Miranda* rights with regard to those offenses.

2270 INFORMANTS

2271 Definitions

- **Informant:** Any person, other than criminal justice or law enforcement personnel, who provides information that is useful for investigative purposes and in return for such

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information, has expectations of receiving something of benefit. Examples are financial gain or reduction or dismissal of criminal charges.

- **Source:** Any person who provides information but will not receive compensation for the information provided and will not take an active role in the investigation. Informant sources may be members of a neighborhood watch, concerned citizens, victims, police officers, business owners, etc.

2272 Policy

Officers may develop a source of information and are expected to utilize the information during an investigation.

Informants will normally be utilized only by personnel assigned to the Investigative Services Bureau. A Division Commander shall approve use of an informant by an officer assigned to a bureau other than Investigative Services. In all instances, the directions of Operations Pamphlet 2 (available on the share drive) shall be followed.

The Special Investigations Division Commander shall be responsible for the management of confidential informant files and procedures related to the management of all informants for the Department. The Special Investigation Division outlines the handling of criminal intelligence information and criminal intelligence activities in its division policy manual.

Informants shall not be used or paid, nor will the information they provide be used as the basis for an arrest or search warrant unless that information has been registered in accordance with the procedures established by the Special Investigations Division Commander.

Specific procedures for working with informants, maintenance of intelligence files and criminal intelligence activities are available through the Special Investigations Division Commander.